

Supreme Court, U. S.

FILED

MAY 28 1977

MICHAEL RODAK, JR., CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1976

76 - 6838

No. \_\_\_\_\_

STACEY LANE, Petitioner

-vs-

STATE OF OHIO, Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO  
OHIO SUPREME COURT

Stephan M. Gabalac  
Summit County Prosecutor  
City-County Safety Building  
Akron, Ohio 44308

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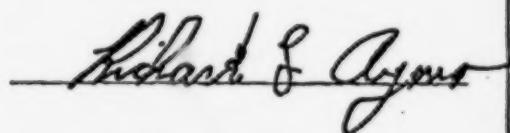
I N D E X

	<u>Page</u>
Opinion of the Ohio Supreme Court . . . . .	1
Decision and Journal Entry of the Ohio Court of Appeals . . . . .	7
Miscellaneous Journal Entries of the Ohio Court of Common Pleas . . .	21
Portions of the Transcript . . . . .	24
Materials Pertaining to Psychiatric Evaluation . . . . .	54
Stay Order Ohio Supreme Court . . . . .	63
Certificate of Service . . . . .	64

Note: Pages 1 through 6 is the Opinion of the Court  
in State v. Lane, 49 Ohio St.2d (1976), and  
has not been reproduced here.

CERTIFICATE OF SERVICE

I hereby certify that all persons required to be served have been served and that I have sent by first class mail a copy of the foregoing Appendix to Petition for a Writ of Certiorari and the Appendix thereto to counsel for the Respondent, Mr. Stephen M. Gabalac, Summit County Prosecutor, City-County Safety Building, Akron, Ohio 44308 on this 27th day of May 1977.



Richard S. Ayers  
Attorney for Petitioner

(C) APPENDIX

STATE OF OHIO )  
SUMMIT COUNTY ) ss:

APPENDIX  
IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT  
(January Term, 1976).

STATE OF OHIO, ) C. A. No. 7924  
Plaintiff-Appellee )  
v. )  
STACEY LANE ) APPEAL FROM JUDGMENT  
Defendant-Appellant ) ENTERED IN THE COURT  
OF COMMON PLEAS OF  
SUMMIT COUNTY, OHIO  
CASE NO. 75 5 601

DECISION AND JOURNAL ENTRY

Dated: April 28, 1976

This cause was heard April 5, 1976, upon the record in the trial court, including the transcript of proceedings, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

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DOYLE, J.

This is an appeal from the judgment of the Court of Common Pleas finding defendant, Stacey Lane, guilty of aggravated robbery and aggravated murder. On the aggravated murder charge, the jury further found the existence of two aggravating circumstances; (1) the murder was committed to escape detection, apprehension, trial or punishment; and

APPENDIX

(2) it was committed while the defendant was committing, attempting to commit, or fleeing immediately after the commission or attempted commission of an aggravated robbery.

The jury returned the verdicts on July 21, 1975. On September 11, 1975, a mitigation hearing was held wherein the court found no mitigating circumstances. Sentences were then pronounced by the trial judge, seven to twenty-five years for the aggravated robbery and death as punishment for the aggravated murder.

On September 23, 1975, after a hearing thereon, defendant's motion for a new trial was denied.

We affirm.

Defendant's convictions arose from the robbery and killing of Georgene Burse, proprietor of the Borocki & Burse Florist Shop in Coventry Township, on February 28, 1975, on the premises of the florist shop.

The evidence reveals that on that day defendant told several relatives he planned to rob the florist shop; that he ascertained, from a half-brother (who had been employed by the shop at one time) and an employee of the shop, whether there would be weapons or money at the Burse residence next door and what times it would be likely that no one but the victim would be in the shop.

The defendant went to the shop twice. The first time

APPENDIX

he did not carry out his plan because people were in the shop. On the second occasion, about 5:30 P.M., the defendant entered the shop and confronted the victim with a gun. When she resisted, he clubbed her on the side of the head and then fired six shots into her body.

Later that evening the defendant was seen counting money taken from the decedent's purse and from a cashbox belonging to the shop nearby. He was also seen looking through several credit cards belonging to Georgene Burse.

Defendant appeals, alleging 17 assignments of error.

Assignment of Error No. 1

"The trial court committed prejudicial error when it refused to allow defendant's counsel to examine the prospective jurors at voir dire upon the question of capital punishment."

This court has previously held that the State may question prospective jurors regarding their opinion of the death penalty. *State v. Bayless*, Summit No. 7513 (Feb. 5, 1975). We are unimpressed with defendant's contention that the requirements of an impartial jury demand that defense counsel be accorded the same privilege. A juror whose opposition to the death penalty prevents him from returning a verdict of guilty is clearly subject to a challenge for cause because of his inability to follow the law as given, divorced from personal feelings. Therefore, the State may

APPENDIX

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examine prospective jurors concerning the death penalty. Reversing the situation, however, can it be said that a juror's admission that he is not opposed to the death penalty raises a challenge for cause in the defense? This conclusion is patently wrong.

The cases cited by defendant stand only for the proposition that a prospective juror is the proper subject of a challenge for cause where he is so opposed to the death penalty that he cannot render a verdict of guilt. Thus, if any prejudice resulted from the trial judge's refusal to permit examination on the death penalty, such prejudice inured wholly to the detriment of the State. This assignment is overruled.

Assignments of Error Nos. 2 and 3

"The trial court committed error in excusing twelve jurors who were not under oath.

"The trial court committed error by allowing five 'joint peremptory challenges' in addition to those permitted by statute, in contravention to the statutory procedure mandated therein."

Defendant cannot complain about a procedure which he actively endorsed at trial. See, State v. Woodards, 6 Ohio St. 2d 14 (1966); See also, State v. Lancaster, 25 Ohio St. 2d 83 (1971). Assignments two and three are overruled.

Assignment of Error No. 4

"The trial court committed error by excusing jurors from the jury selection panel, contrary to the provisions of law and without sufficient cause therefor."

In each of the two incidents cited by defendant, the court properly sustained a challenge for cause when the prospective jurors clearly demonstrated, after lengthy questioning, that they could not be fair and impartial jurors and could not follow the law as given. See, R.C. 2313.42(J). Moreover, as to juror Yannuzzo, defense counsel specifically stated there was no objection to the sustained challenge. This assignment is rejected.

Assignment of Error No. 5

"The trial court committed prejudicial error by allowing to be brought to the jury's attention, by way of references made during the State's opening statement, evidentiary statements which were not to be proved and were in fact not proved by the State."

We find nothing prejudicial in the Prosecutor's opening statements. However, had counsel felt the prosecutor was exceeding the bounds of permissible opening, objection should have been lodged forthwith. With respect to the prosecutor's remarks concerning an alleged grudge, the inconsistency between allegation and testimony is not so egregious as to require a reversal. See, Makley v. State, 49 Ohio App. 359,

APPENDIX

379 (1934). Furthermore, in his closing argument, defense counsel apprised the jury of this inconsistency, thus using it to defendant's maximum advantage.

The record indicates that the prosecutor's remarks about a defense alibi came after a lengthy conference between the trial judge and counsel for both sides. It was then agreed by all that the defendant would be allowed to introduce evidence in the nature of an alibi, notwithstanding failure to give the prescribed notice thereof. Defendant's counsel specifically stated that if the court should so decide, the defense would not object to the prosecutor's examination of the jurors on voir dire as to how they would receive evidence of an alibi. Accordingly, we overrule this assignment.

Assignment of Error No. 6

"The trial court committed prejudicial error by allowing into evidence, for the jury's consideration, reference made to defendant's past criminal record, by way of testimony of a key state witness and by allowing the State to speak thereof during its closing argument."

No objection was raised below to either the answer of Richard Strum or to the remark made by the prosecutor in closing argument. Consequently, any objection was waived. *State v. Lancaster, supra.* We find that the making of those statements in the presence of the jury was harmless error.

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APPENDIX

beyond a reasonable doubt. Crim. R. 52(A). This assignment is overruled.

Assignment of Error No. 7

"The trial court committed prejudicial error in allowing inflammatory and irrelevant photographic slides of the victim to be admitted into evidence."

Whatever the rule in other jurisdictions cited by defendant, it is well settled in Ohio that the determination of the admissibility of photographs, including those of an autopsy, into evidence is a matter within the "sound discretion of the trial court. See, e.g. State v. Middaugh, Summit No. 7787 (Nov. 26, 1975). The mere fact that a photograph is gruesome or horrendous does not render it inadmissible where the court feels it would be useful to the jury. State v. Woodards, supra. The photographs here were relevant and useful to the jury in understanding the testimony of the Coroner (State's Exhibits 11 and 12), as well as that of Deputy Sheriff Morris (State's Exhibits 5, 6, 7, 8, 9, and 10). Therefore, this assignment is overruled.

Assignment of Error No. 8

"The trial court committed prejudicial error by allowing into evidence testimony regarding a telephone conversation between the victim and the witness."

APPENDIX

As testimony concerning the telephone call was not introduced in order to prove the veracity of statements made by the decedent, defendant's assertion that such testimony constituted inadmissible hearsay indicates a misunderstanding of the hearsay rule. See, 21 O. Jur. 2d Evidence §283 et seq. What the decedent said is not at issue. Wayne Burse testified only as to what he heard, the voice of his aunt, from which testimony the jury might have reasonably inferred that the decedent was alive at the time the witness said he received the calls. This assignment is, therefore, overruled.

Assignment of Error No. 9

"The trial court committed prejudicial error by failing to adequately charge the jury with regards to circumstantial evidence."

No request for the instruction, the omission of which defendant now claims was error, was ever made of the trial judge. Moreover, defendant expressed satisfaction with the charge as given. Crim. R. 30. The assignment is overruled.

Assignment of Error No. 10

"The trial court committed error at the mitigation hearing in that its findings were contrary to the evidence and that the court, in dealing with the question of insanity, did not deal with the question of mental deficiency, as called for in R.C. Section 2929.04(B)(3)."

APPENDIX

We find that the trial court properly dealt with the question of mental deficiency and that the court's finding is supported by evidence adduced at the hearing. See, Transcript, Vol. III, pp. 48, 82 and 97. See also, 3 O. Jur. 2d Appellate Review §820. This assignment is overruled.

Assignment of Error No. 11

"The trial court committed prejudicial error when it overruled defendant's motion for judgment of acquittal, and the jury verdict was in error, because the State failed to prove a case against defendant beyond a reasonable doubt, and therefore the guilty verdict rendered was clearly against the manifest weight of the evidence presented by the State."

Our examination of the record leads us to conclude that the court's refusal to grant defendant's motion for judgment of acquittal and the jury verdict were supported by substantial evidence. See, State v. Wallen, 21 Ohio App. 2d 27 (1969). Assignment overruled.

Assignment of Error No. 12

"The trial court committed prejudicial error when it refused to allow discovery of prior statements and grand jury testimony of two key State witnesses, who were in fact co-defendants, in contravention of Ohio Criminal Discovery Rules."

Crim. R. 16 clearly expands discovery beyond the scope previously enunciated in cases such as State v. Laskey, 21 Ohio St. 2d 187 (1970), and State v. Patterson, 28 Ohio St. 2d 181 (1971). The broadening accorded by this rule,

APPENDIX

however, should not be extended further by a distorted reading of the rule. Crim. R. 16(B)(1)(a)(iii) mandates the disclosure of the recorded testimony of a co-defendant before a grand jury. Richard Strum and Rudolph Trivonovich were not co-defendants. Therefore, the discovery authorized by Crim. R. 16(B)(1)(a)(iii) does not include their recorded testimony before the grand jury. Accordingly, we overrule assignment number 12.

Assignment of Error No. 13

"The trial court committed prejudicial error when it refused to recall a key State witness for cross-examination after defense counsel had for the first time seen prior statements of that witness just before cross-examination."

The decision to grant or refuse additional cross-examination of the prosecution witness, after defense counsel's cross-examination had been completed, is within the sound discretion of the trial judge. The record reveals that the trial judge permitted defense counsel one hour and forty minutes to examine prior statements made by the witness and further permitted both defense lawyers to cross-examine the witness. That period of cross-examination lasted for one hour and eighteen minutes. Under these circumstances, the court's refusal to allow additional cross-examination constituted no abuse of discretion. This

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assignment is overruled.

Assignment of Error No. 14

"The trial court committed prejudicial error by allowing the jury, during its deliberations, to have read to them by the court reporter isolated testimony of a key State witness."

Causing all or part of the testimony of a witness to be read to the jury, upon their request, after their retirement for deliberation is within the discretion of the trial court. *State v. Berry*, 25 Ohio St. 2d 255 (1971). We find no abuse of discretion here. Furthermore, the record shows that defendant's counsel specifically expressed satisfaction with the court's answer to the jury's query. See, *State v. Woodards*, supra. Assignment overruled.

Assignment of Error No. 15

"The trial court committed prejudicial error when it allowed the State, during its closing argument, to misstate the law and make clear and strong references to a burden the defendant had to prove himself innocent."

Upon conclusion of the State's case, certain reasonable inferences, adverse to the defendant if unrebutted, may be drawn by the trier of facts. Then the burden of going forward with the evidence to rebut these inferences shifts to the defendant. See, e.g., 21 Ohio Jur. 2d Evidence §157. In final argument, the prosecutor may comment on the state of the evidence. *State v. Marshall*, 15 Ohio App. 2d 187

## APPENDIX

(1968). He may even comment on the defendant's guilt as long as his unsupported personal beliefs are not interjected. *Jones v. State*, 11 Ohio App. 441 (1919). We find that the prosecutor's remarks pointing out that the defendant had not rebutted the adverse inferences of the State's evidence were not improper and can, in no way, be equated with impermissible commenting upon the defendant's failure to take the stand.

We further note that the prosecutor's comments were "invited" by defense counsel's closing argument. *State v. Bridges*, Summit No. 7628 (May 21, 1975). No objection was made to the remarks with the exception of the last remark (Transcript, Vol. II, p. 249), which was possibly covered by a "running exception" previously granted by the trial judge (although, arguably, the record indicates that defense counsel's objection was directed to another aspect of the prosecutor's argument, not now alleged as error). See, *Scott v. State*, 107 Ohio St. 475 (1923); *State v. Lancaster*, supra. Accordingly, we reject this assignment.

Assignment of Error No. 16

"The trial court committed prejudicial error when it overruled defendant's motion for a new trial on the grounds of newly discovered evidence."

Granting of a motion for new trial on the ground of newly discovered evidence is within the discretion of the trial judge. For a refusal to constitute an abuse of discretion, it must appear to the reviewing court that there is a "strong probability that the newly discovered evidence will result in a different verdict." *State v. Lopa*, 96 Ohio St. 410 (1917). Upon review of the record, including the transcript of the hearing on the motion, we find no abuse of the trial court's discretion. The assignment is overruled.

Assignment of Error No. 17

"The trial court committed prejudicial error in sentencing the defendant to the death penalty in that:

"(A) Prejudicial error was committed in convicting and sentencing defendant pursuant to Ohio Revised Code Section 2903.01, 2929.03 and 2929.04 as such sections unconstitutionally permit arbitrary imposition of the death penalty, such arbitrary procedures being held in violation of the United States Constitution in Furman v. Georgia; and

"(B) Prejudicial error was committed in sentencing the defendant to the death penalty as imposed by Ohio Revised Code, Section 2929.04 as said section constitutes cruel and unusual punishment prohibited by the Eighth Amendment of the United States Constitution and Article I, Section 9 of the Ohio Constitution."

This assignment was discussed in detail by Judge Hunsicker of this court in *State v. Bayless*, supra. We

overrule this assignment.

Having overruled all assignments of error, we affirm the judgment.

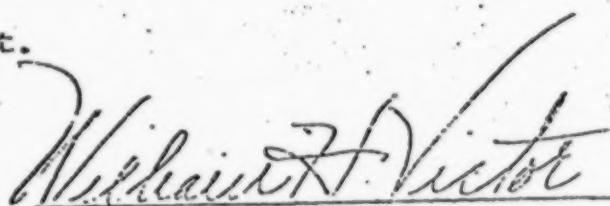
The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the Court of Common Pleas to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Ten days from the date hereof, this document shall constitute the journal entry of judgment, and it shall be filed stamped by the Clerk of the Court of Appeals, at which time the period for review shall begin to run. App. R. 22 E).

Costs taxed to appellant.

Exceptions.



William F. Victor  
Presiding Judge  
- for the Court -

VICTOR, P.J. and  
BRENNEMAN, J. CONCUR.  
(Doyle, J., retired Judge of the Ninth District Court of Appeals, sitting by assignment under authority of Section 6.(C), Article IV, Constitution).

THE STATE OF OHIO  
Summit County ss:

## COURT OF COMMON PLEAS

SEPTEMBER

Term 1975

THE STATE OF OHIO

vs.

STACEY LANE

No. CR 75 5 601

JOURNAL ENTRY

THIS DAY, to-wit: the 11th day of September A.D., 1975, now comes the Prosecuting Attorney on behalf of the State of Ohio, the Defendant, STACEY LANE, being in Court with counsel, W. DICK COOMBS and MICHAEL C. CONWAY, for further hearing on mitigating circumstances heretofore begun on September 10, 1975, and, not being completed, continued until this day, to-wit: The 11th day of September A.D., 1975, at 9:00 O'Clock A.M., said hearing being conducted for the reason that heretofore on July 24, 1975, the Defendant, STACEY LANE, was found Guilty by a Jury of the crimes of AGGRAVATED MURDER, as contained in Count Number One (1), Specification One (1) to Count One (1) 2929.04 (A) 3 and Specification Two (2) to Count One (1) 2929.04 (A) 7, and AGGRAVATED ROBBERY, as contained in Count Two (2) of the Indictment herein.

AND THIS DAY, to-wit: The 11th day of September A.D., 1975, upon due hearing and consideration of all reports and evidence presented, the Court finds that there are no mitigating circumstances present.

THEREUPON, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced:

THEREUPON, IT IS THE SENTENCE OF THE LAW AND JUDGMENT OF THE COURT that the said Defendant, STACEY LANE, be taken hence by the Sheriff to the Summit County Jail and there safely kept and that within Twenty (20) Days he be conveyed to the CHILlicothe CORRECTIONAL INSTITUTE at Chillicothe, Ohio, and thereafter be delivered to the Warden of the SOUTHERN OHIO CORRECTIONAL FACILITY at Lucasville, Ohio, and that he be there safely kept until the 11th day of January A.D., 1976, on which day, within an enclosure, inside the walls of the said SOUTHERN OHIO CORRECTIONAL FACILITY, prepared for

that purpose according to law, the said Defendant STACEY LANE, shall be electrocuted by the Warden of the said SOUTHERN OHIO CORRECTIONAL FACILITY, or in case of the Warden's death or inability or absence, by a Deputy Warden of said Institute; that the said Warden or his duly authorized Deputy shall cause to pass through the body of the said STACEY LANE a current of electricity of sufficient intensity to cause death and that the application of such current of electricity shall be continued by said Warden of said Institute or said Deputy Warden until the said Defendant, STACEY LANE, is dead, for punishment of the crime of AGGRAVATED MURDER, Ohio Revised Code Section 2903.01 (B), a Special Felony; and further that the said Defendant be sentenced for an indeterminate period of not less than SEVEN (7) YEARS and not more than the maximum of TWENTY-FIVE (25) YEARS for punishment of the crime of AGGRAVATED ROBBERY, Ohio Revised Code Section 2911.01 (A) (1) and/or (2), a felony of the first (1st) degree; and that the said Defendant pay the costs of this prosecution for which judgment is hereby rendered against him; including counsel fees to be set at a later date to be allowed to Attorneys W. DICK COOMBS and MICHAEL C. CONWAY; said monies to be paid to the Summit County Clerk of Courts, Court House, Akron, Ohio, 44308.

THEREUPON, the Court informed the Defendant of his right to appeal pursuant to Rule 32 (A) (2) of the Criminal Rules of Procedure, Ohio Supreme Court, at which time the Court ordered that Attorneys PATRICK W. SEMEGEN and CHARLES E. GRISI be appointed for purposes of appeal.

IT IS FURTHER ORDERED that the sentence imposed for punishment of the crime of AGGRAVATED ROBBERY shall be served CONSECUTIVELY and not concurrently with the sentence imposed for AGGRAVATED MURDER in the event

-98-

No.	Page	COMMON PLEAS COURT Summit County, Ohio	JOURNAL ENTRY	THE STATE OF OHIO			Entered	Hon.	Judge Presiding
				W			19		

THE STATE OF OHIO  
Summit County ss:

## COURT OF COMMON PLEAS

SEPTEMBER

Term 19 75

THE STATE OF OHIO

vs.

STACEY LANE

No. CR 75 5 601

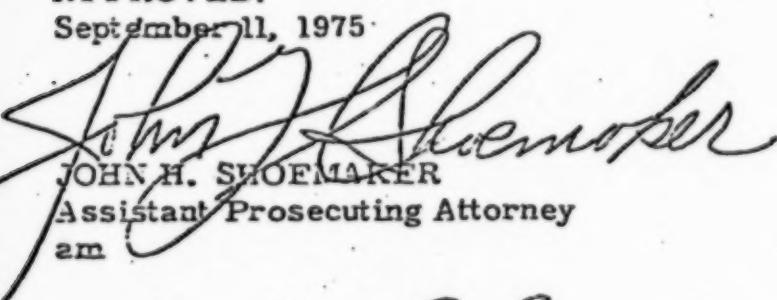
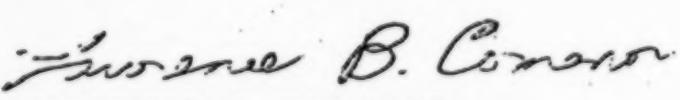
## JOURNAL ENTRY

PAGE TWO

that the capital punishment sentence is ever reduced to life imprisonment.

APPROVED:

September 11, 1975

  
JOHN H. SHOEMAKER  
Assistant Prosecuting Attorney  
am  
LAWRENCE B. COMANOR

Assistant Prosecuting Attorney

L. A. LOMBARDI, Judge  
Court of Common Pleas  
Summit County, Ohio

cc: Attorney W. Dick Coombs  
Attorney Michael C. Conway  
Attorney Patrick W. Semegen  
Attorney Charles E. Grisi  
Psycho-Diagnostic Clinic  
Booking Desk  
Adult Probation Department

**EXCERPTS FROM VOLUME I OF THE TRANSCRIPTS**

Juror 63.

Cheryl D. Koshar, Juror Number 70.

Elizabeth Walker Juror No. 69.

Lastly, we have here John W. Telesca. That covers all the ones --

THE COURT: Other than the ones excused in court this morning.

MR. CONWAY: Your Honor, we would like to represent to the Court at this time Mr. Coombs and myself met with our client, Stacey Lane, and informed Mr. Lane that in court this morning while he was not present there were ten jurors that were excused for medical reasons, reasons for lack of service of the order, and there were some who were out of jurisdiction, and we explained to Mr. Lane that we acknowledged to the Court that we would excuse these jurors and he concurs in our doing that.

THE COURT: All right, thank you.

Is that correct, Mr. Lane?

THE DEFENDANT: Yes.

THE COURT: So that counsel for the Defendant may be on the record. Let the record show that counsel for the Defendant wish to inquire of every prospective juror and go into the question as to whether or not any of the prospective jurors were for or against capital punishment, and the Court has advised them that the Court will not permit that question to be gone into,

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inasmuch as the Court feels that the charge will be that the jury shall not take into consideration any question of punishment. Counsel for the Defendant object thereto, and the Court granted them an exception as to each and every juror who is questioned in this case, and the Court refuses to permit them to inquire as to their views on capital punishment.

I think that saves the record for you, gentlemen, is that satisfactory with you?

MR. SHOEMAKER: The State of Ohio has no position one way or another, that being between the Court and defense counsel.

THE COURT: Is there anything else we should take up?

The Court has said it is going to permit counsel for the defendant and the prosecutors to do all the interrogation as to the qualifications of the jurors, and the Court will not ask any questions, unless of course the Court feels there might be a question that should be gone into. Generally, the counsel go into every question that they deem necessary to select a fair and impartial juror, other than the question of capital punishment.

MR. SHOEMAKER: This is Mr. Brady.  
Have a seat here, Mr. Brady.

THE COURT: It doesn't look like you have very much confidence in our jury system.

**EXCERPTS FROM VOLUME II OF THE TRANSCRIPT**

- A What happened when you sat down and had a beer?
- Q What happened next? Did you have any conversation?
- A Yes, we did.
- Q Would you relate this conversation to us?
- A Pardon?
- Q Could you tell us about those conversations?
- A My brother Stacey asked me if there would be anybody in the florist shop.
- Q What did you say?
- A I said probably, but I'm not too sure.
- Q Okay. What was said next?
- A He said, "Are you sure?" and I said, "I'm not positive."
- Q And what was said after that?
- A He said he was going to rob her.
- Q Going to rob her?
- A The florist shop.
- Q Okay. What was said after he said he was going to go and rob the florist shop?
- A We tried to talk him out of it.
- Q Who is we?
- A My sister-in-law, Patty, and my brother Rudy, and myself.
- Q What was said when you tried to talk him out of it?
- A I don't understand.
- Q Excuse me.
- A Nothing.

- Q What do you mean nothing?
- A Just didn't listen.
- Q All right. He didn't listen to what you said?
- A Yes.
- Q What did you tell him in particular?
- A I said, "You don't want to go back to the penitentiary; do you?"
- Q What did he say?
- A He didn't say nothing.
- Q What was said next? Was there any discussions about wearing masks?
- A Yes.
- Q What was said about that?
- A We asked him why didn't he wear a mask.

MR. CONWAY: We object to this whole line of testimony.

THE COURT: Approach the bench.

(Discussion between Court and Counsel.)

THE COURT: Overruled.

BY MR. CONWAY:

- Q When you asked him why didn't he wear a mask, what did he say at that time?
- A Because he didn't want to be identified.

A Yes, I will. I was at the house on Kreider.

Q That is your regular home?

A Right.

Q Who was there with you at the time?

A My grandmother and my brother Bill.

Q Did anybody come over at that time?

A Yes.

Q Who was that?

A My brother Stacey.

Q What happened when he came over?

A We went out for a little ride.

Q What was said in the ride, if anything?

A He asked me if I was scared, and I said, "Yes."

Q What else was said?

A He said, "Don't worry about it." Then he said that he was scared too.

Q Okay. Was anything else said?

A No.

Q Okay. Now, Mr. Sturm, I want to ask you, when the police first came and investigated this case, did you tell them everything that you told us here today?

A No.

Q Why didn't you?

A I wanted to protect myself and protect my brother.

Q As a matter of fact, are you charged with a crime arising

out of this?

A Yes.

Q What crime is that?

A Obstructing justice.

C Everything that you told us here today, was that the complete truth?

A Yes.

C Did anybody promise you anything or threaten you with anything for testifying?

A No.

MR. COMANOR:

No further questions,

your Honor.

THE COURT:

You may cross-examine.

MR. COOMBS:

May we approach the

bench, your Honor?

THE COURT:

Approach the bench.

(Discussion between Court and Counsel.)

THE COURT: Ladies and gentlemen of the Jury, some question has been raised by Counsel, and the Court will have to declare a recess, because it is a matter for the Court and not for the Jury. You will now be excused for at least 15 minutes and take a 15 break, and

remember my admonition to you that I have heretofore given you, and as soon as we are ready, we will recall you. You are now excused about 15 minutes.

\* \* \* \*

R E C E S S

\* \* \* \*

MR. CONWAY: We want an exception to the overruling of our objection as to obtaining Richard Sturm's testimony before the Summit County Grand Jury pursuant to the Ohio Rules of Criminal Procedure as it is, the Defense can receive that testimony. The Court has overruled our obtaining that testimony, and to that overruling we take exceptions.

THE COURT: Approach the bench.

We will proceed.

Let the record show that the Court ordered that the Prosecutor turn over two different statements by the witness, Richard Sturm, and that they have had the statements in their possession, two separate statements, one -- how many pages -- 22 pages, and the other, how many pages?

MR. COONEY:

19.

THE COURT:

They have had them

over an hour-and-a-half, and the Court has permitted them to have the statement for the impeachment of the witness on the stand. And since they have had them for an hour-and-a-half, and there are two lawyers, it is a question of only searching out inconsistent statements that he gave here. His testimony didn't last over 20 minutes. We will proceed with the cross-examination, and you may cross-examine him on the statements, and while one cross-examines, the other can be marking the other statements. We will give you all the time you want to cross-examine, as much time as needed.

MR. COOMBS:

Only one attorney

can cross-examine, your Honor; is that right?

THE COURT:

Yes. If you want,

in this case, I could make an exception, if you want to examine one statement and he examine the other, all I want to do is get along with it.

Do you want to do it that way?

MR. COOMBS:

Yes, your Honor.

THE COURT:

Mr. Shoemaker, do you

want to do it that way?

MR. SHOEMAKER:

Well, the Court has

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- Q Have you given other ones besides that?
- A I only made two statements.
- Q All right. Whether or not they are recorded, I am including conversations or questioning by the Sheriff or the Prosecutors, okay? Now, have you given, besides this statement, have you given them others?
- A You mean talking to them? Yeah.
- Q Conversation where you have told them things that differs from what you are testifying to?
- A Yes, the first statement.
- Q When was that?
- A I couldn't tell you.
- Q Wasn't it Saturday after the homicide?
- A Well, they talked to me after that, right.
- Q Generally, what did you tell the police and the Prosecutor respecting the first recorded statement?
- A Say that again.
- Q Just generally, what was your testimony about this matter?
- A You mean --
- Q The first recorded statement?
- A I told them I didn't know nothing about it.
- Q What else did you tell them?
- A I told them a bunch of lies, that was it.
- Q Do you have any idea how many lies you told them in that statement?

A No.

Q Do you remember how long that statement was?

A No.

Q Do you remember where the statement was given?

A You mean the recorded statement?

Q Yes.

A Yes, the Sheriff's Office.

Q Rick, you had worked at the florist shop, did you not?

A Yes.

Q How long did you work there?

A Quite a while.

Q How long is quite a while?

A I couldn't tell you.

Q You can't tell me?

A Pardon.

Q You couldn't tell me?

A No.

Q Years?

A Yes.

Q Several years?

A No, not several years.

Q Two years?

A Probably about two years.

Q All right. When did you quit working for them?

A Me and Pick had a little fight like, because he lowered

my pay, so I quit right then.

Q I'm sorry, I didn't quite hear that.

A He lowered my pay, so I quit.

Q Okay. When was that?

A Probably around December.

Q December?

A Right.

Q And you say it was an argument?

A Right.

Q How serious was the argument?

A Not serious.

Q You just quit?

A Right.

Q What did you do after that?

A What did I do after that? What could I do?

Q Well, did you get another job?

A Right.

Q Where did you work then?

A At Rocky Drive-Thru.

Q Now, would you consider yourself a friend of Rick and Georgene Burse?

A Yes.

Q Would you have occasion to go to their house for social events?

A Yes.

body moved after he shot her the first time, or when he was shooting her, and he said that after he shot her the first or second time she didn't move at all.

Q All right. Who was there at the time that you had this conversation that you have just related to us?

A Erica might have been, Patty's daughter might have been there. Nobody else was. I don't remember if Erica was or not.

THE COURT:

Erica is the two-year-old?

I didn't get it, who was there?

THE WITNESS:

My sister-in-law's

daughter, Erica.

THE COURT:

The sister-in-law's

daughter.

BY MR. COMANOR:

Q Okay, Mr. Trivonovich, did anyone return shortly after this particular conversation you have just described?

A Patty came in. My sister-in-law came in about seven o'clock with Bill, one of my younger brothers.

Q What is Bill's full name?

A William Sturm.

Q Now, I'm going to call your attention to the next day. Did you have an occasion on the next day to have a discussion in relation to these events in the flower shop and around about the flower shop with Stacey Lane?

A Yes.

O Where were you when the discussion was held?

A I don't remember. Again, I don't remember just where we were. Probably at the apartment early in the morning before anybody left the house.

O Are you sure about the time or are you estimating?

A I'm not sure it was the morning either. It was the next day.

O All right. What was said?

A We were talking about how to dispose of that gun that he used. Stacey wanted to bury it somewhere, so that he would be able to go get it if he wanted it again. I wanted him to throw it in the lake so nobody could get it again so it would be gone.

O All right. Mr. Trivonovich when the police first came around and asked you questions and were investigating this homicide and robbery, did you tell them the full story as you have told us today?

A No, sir.

O Could you tell us why you didn't?

A I didn't want to tell them that Stacey shot that lady in the flower shop. I didn't want to tell them.

C Why?

MR. COOMBS:

I object, your

Honor.

THE COURT:

Yes, a "Why" question

is not proper.

MR. COMANOR:

Okay.

BY MR. COMANOR:

Q Are you charged with a crime arising out of this entire happening?

A Yes, sir.

Q What crime is that?

A Obstruction of justice.

Q Have you told us the full truth today here?

A Yes, sir.

Q Has anyone promised you or threatened you with anything to come in here and tell this?

A No.

MR. COMANOR:

No further questions.

THE COURT:

You may cross-examine.

MR. CONWAY:

May we approach the

bench.

(Discussion between Court and Counsel.)

THE COURT:

Ladies and gentlemen

of the Jury, I am going to recess you to give  
Counsel for the Defendant time to examine a  
written statement given by this Defendant and

Jury Room to continue their deliberations at  
5:50 o'clock, p.m.)

VERDICT

THE COURT:

Mr. Rusinoff, has

the Jury reached a verdict?

THE FOREMAN:

Yes, they have, your

Honor.

THE COURT:

Would you deliver it

to the acting Bailiff, please?

I have a verdict here:

We the Jury in this case, being duly impaneled  
and sworn to well and truly try and true deliverance  
make between the State of Ohio and the Defendant  
Stacey Lane do find him guilty of aggravated murder  
as charged in count one of the indictment.

And we do find the Defendant guilty of  
specification one to count one aggravated murder,  
to-wit: that said offense was committed for the  
purpose of escaping detection and apprehension,  
trial or punishment for another offense committed  
by the Defendant, to-wit: aggravated robbery.

And we do find the Defendant Stacey Lane  
guilty of specification two of count one aggravated

murder, to-wit: the killing of Georgene Burse was committed while said Defendant was committing, attempting to commit, or fleeing immediately after committing, or attempting to commit aggravated robbery.

And we do so render our verdict upon the concurrence of twelve members of said Jury. Each of said Jurors concurring in said verdict, signs his name hereto this 24th day of July, 1975.

I will now proceed to poll the Jury.

Members of the Jury, as I ask you, would you please respond "It is my verdict" or "Is not my verdict

Mike Rusinoff, is this your verdict?

MR. RUSINOFF: It is my verdict,  
your Honor.

THE COURT: James Cross?

MR. CROSS: It is my verdict,  
your Honor.

THE COURT: James Guspoden?

MR. GUSPODEN: It is my verdict.

THE COURT: Paul Chinrock?

MR. CHINROCK: It is my verdict.

THE COURT: Elmer Flouri?

MR. PLOURI: It is my verdict.

THE COURT: Paul Chinrock?

**EXCERPTS FROM VOLUME III OF THE TRANSCRIPT**

A Yes. It was in the evening.

Q But do you know the month?

A No, I don't. I don't remember that.

THE COURT: What year was it,

please? I didn't hear that.

BY MR. COOMBS:

Q What year was it, ma'am?

A I really don't know.

Q 1965? Does that help?

A I think so.

Q Do you know how old Stacey was when he had this accident?

A He had just turned 16.

Q Generally, what type of accident was it?

A It was an automobile accident.

Q And do you recall what the injuries were to Stacey?

A Well, he had a brain concussion.

Q Do you know whether or not he had a fractured skull?

A Yes, they say he did. The doctors said he had one.

Q Do you know what hospital he was in?

A In Children's.

Q Was he in another hospital prior to that?

A First they took him to Wadsworth Hospital, and my husband transferred him out of Wadsworth Hospital, because it wasn't a decent hospital for him to be in.

Q Then he went to Children's Hospital?

- : Yes.
- Q Did you see him in both hospitals?
- A No, I didn't see him in Wadsworth; my husband did.
- Q Did you see him in Children's Hospital?
- A Yes.
- Q Was he conscious or unconscious?
- A He was unconscious.
- Q Do you know how long he was unconscious? If you recall?
- A 10 days.
- Q How long was he in the hospital total?
- A About 21 days.
- Q Now, did he have any physical or medical treatment, rather, after his release from the hospital?
- A Oh, he had to go back to the doctor for examination, check-ups, and stuff like that.
- Q What doctor was that, do you know?
- A Doctor Baird.
- Q And do you know when the last time was that he went to a doctor as a result of this accident you have described?
- A No, I don't.
- Q Did you ever notice anything different in his attitude or his personality after this accident?
- A You mean after he came back from prison, or what are you talking about?
- Q No. After the accident, ma'am. Anytime after the

- Q Doctor, before, in your report, would you tell us how, based on your report of August 13, 1975, how do you categorize Stacey Lane?
- A You mean by way of a diagnostic category?
- Q Yes.
- A I would characterize him as a schizoid personality with some anti-social features. Schizoid personality and anti-social personality.
- Q Is a schizoid personality individual a psychotic person?
- A He is not.
- Q He is not?
- A No.
- Q Doctor, based on your education and training as a psychiatrist, and to a psychiatric certainty, and keeping in mind the definition that you gave this Court of psychosis, I am going to read you a paragraph, Doctor, under — on the page of the report that you have in your hand, where it says "present history". My question, Doctor, after I read this paragraph, is this not an example of an individual who is psychotic? And it reads as follows: According to the information available from the police, he tore up his house, and at the same time he took an overdose of some medication, supposedly amphetamines, and ran out of the house nude. He then broke into two houses and threatened the residents.

.. When police arrived, the patient was sitting on the ground sucking his hands, which were bleeding. And he was taken to Barberton Citizens Hospital, where he was treated for two days from his wounds and his overdose. On his left hand he received many stitches and his right elbow was bandaged. He was then transferred here.

Q Is not that a description, Doctor, a description of a psychotic person?

A Yes, I would agree.

Q Doctor, if I told you that the description that I have just read and the acknowledgement that you made that this is an indication of a psychotic person --

A At that particular time.

Q Yes. And I told you that this individual was the one and same Defendant, Stacey Lane, would this cause you to change your opinion as to your psychiatric evaluation of him?

A It would not, for the sole reason this report from the hospital to me, it sounds like it is a temporary sort of psychosis, particularly knowing fully well that Mr. Lane had been used to using drugs or abusing drugs, and also used to drinking excessively; it is quite possible that one of these two factors might have precipitated this condition. There is no mention of the effect of his not--

Q Did you also state earlier that extensive use of alcohol and drug abuse could?

A Yes, I did.

Q Based on your experience as a psychiatrist, to a psychiatric certainty, be a cause of a psychotic state?

A It could produce a psychotic state, which usually remits itself within about 24 to 72 hours.

Q Okay. If that individual who performed the act that was described in the statement that I have read to this Court, based on your opinion as a psychiatrist, Doctor, and to a reasonable psychiatric certainty, assuming that there has been continuous excessive use of alcohol and drugs, have we not in fact, Doctor, is that person not a psychotic person?

A At this particular time this evaluation was done, it looks like he must have been. Very clearly, he has been at this particular time.

Q Please, sir?

A It is very clear that he has been psychotic at that particular time, this particular report was written. However, at that time he was under the care of this particular physician.

THE COURT: What was the date  
of that?

MR. CONWAY: March 29, 1975.

Your Honor, the date on the report, if I may --

BY MR. CONWAY:

Q Doctor, based on your experience as a psychiatrist, and to a reasonable psychiatric certainty, is it possible sir, for a psychosis, for psychosis to develop as the result of an unhappy childhood?

THE COURT:

Mr. Conway, you will have to put it in a sphere of probability and not possibility. You placed it in possibility.

Rephrase it.

BY MR. CONWAY:

Q Doctor, based on your experience as a psychiatrist, and to a reasonable psychiatric certainty, can a psychosis be developed from an unhappy childhood?

MR. COMANOR:

I'm going to object to an unhappy childhood, your Honor. I don't know what that means medically.

THE COURT:

It is too indefinite.

Sustained.

MR. CONWAY:

Okay.

BY MR. CONWAY:

Q You did say that your report -- withdraw the question.

MR. CONWAY:

I have no further

questions.

MR. COMANOR:

Just a few short

MR. CONWAY:

Would you mark

this for us, please.

(Defendant's Exhibit F, being a brain scan was marked for identification by the Reporter.)

BY MR. CONWAY:

Q Doctor, handing you what has been marked Defendant's Exhibit F, they are the electroencephalogram and the brain scan?

A Right.

Q Okay, Doctor, I am going to refer you to the second page, the electroencephalogram looking in the body headed description, if you know, Doctor, can you enlighten us as to what is meant by the overall record is of somewhat low voltage? Do you know what they are referring to?

A Yes. The voltage may be high or it may be low. They are measuring the electricity or electrical discharge resulting from brain function.

Q From brain function?

A Right.

Q Okay. What would low voltage be? If you know? Signify?

A To me, it would not signify abnormality. It would still

be in the normal range.

C Okay. Did you say, however, Doctor, that the reports are not, the examination is not -- withdraw.

Q Doctor, I earlier described to you or read to you a description of a situation in an individual, and you referred or you stated that in your expert opinion, and to a reasonable psychiatric certainty, that that was an example of psychotic behavior? Do you recall the piece I read you?

A Yes, I do. To be specific, it referred to a psychotic episode.

Q Doctor, if I told you that that individual described in there was the Defendant, Stacey Lane, based on your experience as a psychiatrist, and to a reasonable psychiatric certainty, does this not describe a psychotic person?

A It does describe a psychotic episode in this gentleman.

Q Okay, sir.

MR. CONWAY: I have no further questions. Thank you.

MR. COMANOR: Just a few brief questions, Doctor.

CROSS-EXAMINATION BY MR. COMANOR:

Q First of all, there were some questions of your credentials at the beginning of your testimony; and I noted at the

equivocation no ambiguity. The Defendant has no mental deficiency and he has no mental illness. And finally, Doctor Gunter, President of the Psychiatric Society, Diplomat in the field of psychiatry, you heard about his background, and Doctor Gunter said the same thing in his report and his testimony, that the Defendant has no mental deficiency and the Defendant has no mental illness. The evidence is clear, your Honor.

THE COURT: The Court has before it the chart from the Children's Hospital, the emergency room report, together with the educational data of the Defendant, the pre-sentencing investigation report made by the Adult Probation Department, the psychologist's analysis made by Doctor Daniel Reinhold of the Psycho-Diagnostic Clinic; and I am mindful -- I made extensive notes of the doctors who did testify here, the psychiatrists and the psychologist, but all of them in their conclusions, all conclude that the Defendant in this case -- and Doctor Kaiser here, he considered the neurological evaluation which he has made for the Court, and which the Counsel

for the Defendant has had in their possession, and I note on the bottom of page two, and he analyzed the neurological evaluation. He says this type of brain damage does not greatly effect his behavior, and should not be considered the basis for cause of his serious behavior problems. And then he ends up and says that it is his opinion that he is not mentally deficient and functions intellectually more like the average or normal person of the general population. He has the ability to perform daily activities in an appropriate manner and knows the difference between right or wrong. He is not mentally ill in a legal sense, but is a disturbed individual in a psychiatric or psychological sense. He has many personality and character problems, but he is in contact with reality and does not demonstrate hallucinations or delusions. He does demonstrate minimal or borderline brain dysfunctioning in the area of immediate, immediate recall. However, it is memory recall. However, it is my professional opinion that this is not the cause of his action or behavior.

The other Doctor, Doctor Gunter, who says

that this man is not mentally deficient. He is not mentally affected and he is not diagnosed as mentally ill or psychotic. And he says the brain damage is not brought out in any other way during the psychiatric history and examination and neurological history. He testified that the brain scan showed there was no -- I think the thing that he was interested in was whether or not there was any -- I think he was looking for -- it was a question of -- where is what I'm looking for -- any epileptic type episodes. He says he finds none. The brain scan itself was negative. And I must remind the Defendant's Counsel that the burden of establishing mitigating circumstances, the burden is upon them to show the same by a preponderance of evidence, and all the doctors who testified do not feel that this man is mentally deficient or defective. And therefore, the Court finds there is no mitigating circumstances, as provided for under the statute.

And therefore, at this time, the Court would inquire of the Defendant's Counsel if before sentence is imposed, whether or not there is anything further you might say to the Court.

MR. COOMBS:

We have nothing

further, your Honor.

THE COURT:

Mr. Conway?

MR. CONWAY:

No, sir.

THE COURT:

And Mr. Lane, is

there anything further you wish to say to the  
Court at this time?

THE DEFENDANT:

No, your Honor.

THE COURT:  
please stand.

If not, you will

The second count in the indictment charges  
you with aggravated robbery. So on that charge,  
it is the sentence of the law and the judgment  
of the Court that you be taken hence to the  
Summit County Jail, and there to be safely kept,  
and within 20 days -- and I fix 20 days so that  
you will have time to consult with Counsel locally  
rather than the usual five days -- and at the  
end of 20 days you will be conveyed by the  
Sheriff of Summit County to the Ohio State  
Penitentiary, and there to serve a sentence not  
less than seven nor more than 25 years for the  
crime of aggravated robbery as provided by the  
laws of the State of Ohio.

And as to the crime of aggravated murder,

the Court finds from a review of all of the reports, the testimony, the statements, and arguments of Counsel, and upon consideration of all these matters, that there is no mitigating circumstance in this case wherein the Defendant, Stacey Lane, has been heretofore convicted of aggravated murder. It is therefore considered and adjudged and decreed, and it is the sentence of the law and the judgment of the Court that the Defendant, Stacey Lane, be taken hence to the Summit County Jail, and there to be safely kept, and within 20 days the Sheriff of Summit County, Ohio shall convey the Defendant, Stacey Lane, to the Ohio State Penitentiary at Lucasville, Ohio, and then on the 11th day of January, 1976, that the warden of the Ohio State Penitentiary, within the walls of that penitentiary, and within an enclosure for that purpose, and under the direction of the warden of the Ohio State Penitentiary shall cause a current of electricity of sufficient intensity to cause the death, to pass through the body of said Stacey Lane, and the application of said current shall be continued until the said Stacey Lane is dead as provided by the

laws of the State of Ohio for the crime of  
aggravated murder of one Georgene Burse.

May God have mercy on your soul.

The Sheriff's Deputies may now take the  
Defendant back to the jail.

(Thereupon the hearing was concluded at  
10:37 o'clock, a.m.)

**PSYCHIATRIC EXAMINATIONS OF STACEY LANE**

MERLE D. KAISER, PH.D.  
CLINICAL PSYCHOLOGIST  
1655 WEST MARKET STREET, SUITE 435  
AKRON, OHIO 44313

## PSYCHOLOGICAL TEST REPORT

NAME: Stacey Lane (SS#270-50-0293)

AGE: 25 years (DOB 2/10/50)  
1975

DATE TESTED: August 4, 1975

REFERRED BY: Daniel B. Reinhold, Psychologist/Administrator,  
Summit County Psycho-Diagnostic ClinicTESTS ADMINISTERED: Wechsler Memory Scale - *verbal, visual, auditory, incidental*  
Wechsler Adult Intelligence Scale  
Memory for Designs - *verbal, visual*  
Rorschach Ink Blot Test  
Minnesota Multiphasic Personality Inventory

## INTRODUCTION

This twenty-five year old, white, unmarried male was tested at the Summit County Jail on August 4, 1975. He was cooperative at all times and readily became involved in the testing situation. The results are valid for him at this time.

The client has been convicted of aggravated murder and may possibly face the death penalty. The psychological evaluation was done to determine whether or not the client is mentally ill or mentally deficient. Stacey is about five feet nine inches tall but only weighs one hundred twenty-eight pounds. He is extremely undernourished and thin. The client has long, wavy brown hair and a mustache.

Stacey has a juvenile and adult criminal record including confinement at the Federal Correctional Institute at Tallahassee, Florida. He has not worked for more than five or six months in any job but he did begin management training with the Red Barn Restaurant food chain. He completed high school by passing the GED tests in 1970. He was never given psychological tests prior to this time.

## INTELLECTUAL EVALUATION

The Wechsler Adult Intelligence Scale yielded a full scale IQ of 100 for the client. This places his level of general mental ability within the normal or average category. The classification includes IQ scores of 90 to 109 and is characteristic of about fifty per cent of the general population. His judgment and common sense for dealing with daily activities are adequate. He is able to deal appropriately with people in social situations and he has good verbal concept formation. He is in contact with reality. There is no significant differences between his verbal and performance abilities (Verbal IQ 102 vs. Performance IQ 98). *(P, psych, T, 150)*

## PERSONALITY EVALUATION

The objective and projective personality assessing devices clearly show that the foundation underlying his personality structure involve rebelliousness and hostility.

He is egocentric, self-indulgent, evasive and consistently resentful and argumentative. The client will not readily admit to his own responsibility for difficulties and will deny psychological problems. He will exhibit poor judgment, will be suspicious and will show an exaggerated need for attention and affection. Somatic complaints are often reported by people of this type and they include spells of amnesia, delusions and cardiac complaints. People of this type do not often respond to treatment.

Many people are unable to cope with the stress and strain placed on them by society and resort to the use of alcohol and/or drugs as a means of coping with frustration. Others may use tobacco to excess or overeat. These test results indicate that Stacey Lane may fall within this category. He answered the test questions in a manner characteristic of the alcohol addicted individual or the problem drinker. Drug abusers often respond to the test questions as did this client. This area of his functioning should be examined by his counselor.

#### CLINICAL OBSERVATION

The client's affect was rather flat during the interview and his voice was soft, at times almost a whisper. He was cooperative and rapport was good. Stacey Lane is of moderate height but very thin and undernourished. His features are delicate and moderately handsome. He has long wavy hair and a mustache. No delusions or hallucinations were elicited during the interview; however, he did describe several reoccurring frightening dreams that he had weekly up to the age of about fifteen. He often jumped out of bed and ran from the house at the conclusion of the dreams. The two main themes of his dreams were a large black vampire bat that would chase him and try to suck blood from his throat and a large evil looking monster that would chase him and try to squeeze the air from him.

He described his use of alcohol and drugs as moderate but when asked to discuss his daily intake of these substances, he related that when not working he would drink about nine or ten bottles of beer a day. His drinking pattern included three beers in the morning to be followed by a light lunch and then three beers slowly consumed during the afternoon and about four after supper. He smoked marijuana several times each day and used amphetamines to keep awake and active when he had to work. His consumption of these substances increased on the week-ends if he had the necessary funds. He eats very little and periodically stops using amphetamines so that his body can recover. The client most definitely is drug dependent (marijuana and amphetamines) and is a habitual excessive drinker.

#### NEUROLOGICAL EVALUATION

We are dealing here with an individual who has a limited or specific type of brain dysfunctioning. He is brain-disordered in the area of immediate recall. His logical memory for immediate events and his rote memory are below the average or normal level for people of his age group. The client's visual-perceptual problem solving ability is very weak. Also, his psychomotor speed and the related learning process is severely retarded. This is often found among those who are pathologically depressed and less frequently among certain schizophrenic conditions. In summary, it can be said that the client's physical-motor coordination is intact but that he suffers immediate memory loss; i.e., he finds it difficult to remember immediate events but can remember situations and data from long in the past. In a young person of twenty-five this is often caused by extended use of alcohol and/or drugs. This deficiency often returns to normal after a long period of rest, proper diet and abstinence from drugs and/or alcohol. This type of brain damage would not greatly effect his behavior and should not be considered the basis or cause of his serious behavior problems.

Dysfunctioning  
alcohol  
psychotic

-3-      Re: Stacey Lane

The client discussed with me an automobile accident in which he had been involved in 1965. He sustained a head trauma and was unconscious for ten days. Perhaps this accident and his extensive use of alcohol and drugs for many years could be the cause of his neurological deficiencies.

Psychodiagnostic Impression: (1) alcohol addiction, habitual excessive drinking  
(2) drug dependence, marijuana and/or amphetamines  
(3) paranoid personality with antisocial features

**CONCLUSIONS**

This individual is not mentally deficient and functions intellectually more like the average or normal person in the general population. He has the ability to perform daily activities in an appropriate manner and he knows the difference between right and wrong. The client is not mentally ill in a legal sense but is certainly a disturbed individual in a psychiatric and psychological sense. That is, he has many personality and character problems but he is in contact with reality and does not demonstrate hallucinations or delusions. He does demonstrate minimal or borderline brain dysfunctioning in the areas of immediate memory and recall. However, it is my professional opinion that this type of dysfunctioning is not the cause of his acting-out behavior.



Merle D. Kaiser, Ph.D.  
Clinical Psychologist

D. V. RAMANI, M.D.

Psychiatrist

SUITE 2 ARCADE BUILDING  
2105 FRONT STREET  
CUYAHOGA FALLS, OHIO 44221

929-0995

August 12, 1975

Mr. Stacy Lane

This single white male was interviewed in the Summit County Jail for a period of one hour on August 2, 1975 regarding a psychiatric evaluation. The purpose of the evaluation was to decide whether or not he is mentally ill or mentally deficient.

Stacy is presently incarcerated on charges of aggravated murder. He is alleged to have murdered a woman working in a flower shop. Stacy's past history consists of running away from home, being sent to a detention home, and shop lifting and also a series of breaking and entering. Stacy says he has been in trouble since the age of 12 or 13. He has spent all in all 56 months in various jails. He has been out a year. He admits to using drugs, and states he started in jail in Marion and Lucasville. He denies abuse of alcohol. There is no detrimental history of psychiatric hospitalization or treatment in the past. Stacy feels he never needed any psychiatric help or does not need it now. It is very apparent that Stacy has had repeated chances to learn from incarceration and obviously he has not done so. I doubt whether he has the capacity to learn a lesson from incarceration. Stacy's psycho-social history and school history have been pretty well dealt with by Mr. Reinhold and they are sufficient for this examination and I have nothing more to add in this area.

On examination Stacy was dressed appropriately in jail clothes. He was well groomed, polite, and friendly. He was also very cooperative. He appeared to be depressed or apathetic in the beginning. However, he answered questions very well and very promptly and I got the impression that he did all he could to help me. He understood the purpose of this evaluation and that no information would be kept confidential since it had to be submitted to the court. Overall Stacy appeared to be of average intelligence. He did not exhibit any overt psychotic symptoms at the time of the examination. He was quite coherent, relevant, and lucid. He was well oriented and there was no memory impairment. There were no evidences of personality deterioration. He denied any hallucinations or any paranoid thinking, even though he was suspicious which I believe is due to his circumstances. For example, at the end of the interview he casually mentioned that he would not tell me certain things because it could hurt somebody because he doesn't mind being destroyed, but he would not want to ruin other peoples lives. After a little coaxing he concluded the statement by saying "I would rather not talk about it" quote on quote. His judgment and insight is considered to be appropriate to his day to day life style. Certain things that he said point out the fact that Stacy could be sort of a schizoid personality. He considers himself sort of an outsider looking in rather than participating in what is going on. On the other hand, he claims to have a few chosen friends and he also claims to have adequate heterosexual relationships including sexual relationships with members of the opposite sex. He also admits that he has been called a loner, but does not consider himself so.

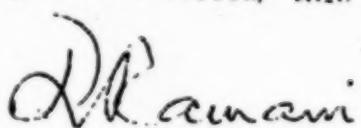
August 13, 1976

Dr. V. Ramani

Stacy Lane

He does readily admit that he will trust anybody if he has reasons to do so. There is a lot of anger in this young man which is rather inappropriate. For example, talking about a Polygraph Test, when I ask him whether he would take one, his answer was that he was willing to take one but they wouldn't give him one. Now they are asking him to take one and he will not accept. He feels that now by not taking one it would be the best way to get back at the system. When asked what he considers he has to lose by not taking a Polygraph Test as to what he has to gain by taking it, his answer was "He has nothing to lose anyhow". Stacy was reasonably calm and placid throughout the interview and there was no evidence of anxiety even though I could spot out some underlying depression.

In summary, as mentioned above, the specific questions which were requested of me can be answered by stating that Stacy is not in my opinion at this specific time mentally ill or mentally deficient. I hope this information will be of use to court in making a decision on this case. Thank you for referring this interesting young man to my attention.



Dr. V. Ramani, M.D.

DVR/krf

August 11, 1975

Psychiatric Examination on Stacey Lane: -

The above was examined on 6 August, 1975. He explains that the charge is aggravated murder and robbery and that he did not do it. There has been previous trouble with the Law, and he did time in a Federal Correctional Institution in Florida. Also some in Mansfield, 56 months altogether. There was a breaking and entering charge and taking cars to Florida and he was brought back here.

Regarding his health he was in an auto accident in 1965, at which time he was unconscious for ten days and was at Children's Hospital for 21 days. Also had an operation in Lucasville for left arm. Left arm is partly incapacitated and shows large scar in elbow region. He also had an ear infection with a discharge and odor and feels he should have more treatment for that. Also has a kidney infection. He has had some ear trouble all his life. His hearing is fair, he states, but on testing it is noted that he cannot hear wristwatch with right ear, but can hear same on left side. He has weakness of left eye, and this runs in the family. He never passed out or fainted, but when he gets up the blood rushed to his head. He never had a brain wave test, but had a skull x-ray at the time of his concussion and had a fracture in right orbital region. He states he is not nervous and has no medication that he is taking for nerves. His sleep is pretty good and he dreams a lot. His mother is quite nervous and on medication for that and also has migraine headaches. The youngest brother has a nervous condition and ulcers.

Mr. Lane never sees or hears things unusual or hard to explain or unreal. Also does not feel they talk behind his back or against him. He was deferred from Draft because of his arm injury.

At the time he took excessive medication allegedly in a suicide attempt, he actually was doing the opposite, he explains: He was trying to save his own life, since he feared someone might shoot him and he asked people to help him escape from that.

The accompanying records reveal a February 1975 description of homicide in a Summit County Florist Shop. The Stacey Sturm apparently is the same Stacey Lane Sturm mentioned in the I.D. Bureau report in which starting in 1968 his name is given as Stacey Lane. Record is fairly extensive.

In March 1975 he was hospitalized at a local mental hospital for irrational and threatening and confused behavior following his taking an overdose, possibly amphetamine. The hospital report indicates the name Sturm but apparently we are dealing with the same Lane. Also the report indicates 21 days of unconsciousness in 1965, but more likely this is in error, and

continued .....

Psychiatric Examination on Stacey Lane, continued: -

was only 10 days. He was diagnosed anti-social personality. He does at this time relate a suicide attempt and from this has a delicate old scar on left wrist.

He is a little confused as to whether he worked for Red Barn in 1974 or 1975, month of April, but then remembers he got out of prison in April 1974 and thus worked until November 1974 when he quit.

His step-father drinks quite a bit, but never misses work. Mr. Lane is not active in any sports, but he can swim. His crippled arm made him feel inferior.

Essentially, in summary, we can confirm the report by Mr. Reinhold of 28 July. This report describes him as an inadequate individual and diagnostically I agree with this as well as with the diagnosis of anti-social personality made at the hospital with the latter diagnosis probably being more significant. It is not felt that he is mentally defective. Also he is not diagnosed as mentally ill or psychotic. However, it is strongly felt that he had at least one psychotic episode, most likely under the influence of excessive central nervous system stimulating drugs. Furthermore, he has a significant history of brain concussion with 10 days of unconsciousness and possible brain damage resulting therefrom. This brain damage is not brought out in any other way during the psychiatric history and examination and the neurologic history. The latter being in question regarding unconscious or epileptic type episodes. It may be that some light can be thrown on this in his psychological testing. Also it would seem desirable that he obtain an E.E.G. or brain wave test.

Sincerely,

2/5/75  
Martin J. Gunter, M.D.

MJG:lg

DR. CHERRY  
L73228

DATE	EXAM	CODE NO.	HOSP. PROFS.
8/21/75	Brain scan	570042 000000	

ROOM  
NO.

No. 323934

RADIOLOGY  
CONSULTATION

AKRON GENERAL  
MEDICAL CENTER  
AKRON, OHIO  
X-RAY NO.

323934

<input type="checkbox"/> IN	<input checked="" type="checkbox"/> OUT	<input type="checkbox"/> I.H.	<input type="checkbox"/> HOUSE	<input type="checkbox"/> LIP	<input type="checkbox"/> HAIR	<input type="checkbox"/> CART	<input type="checkbox"/> PORT.	<input type="checkbox"/> URGENT	<input type="checkbox"/> STAT	
SEX	MALE	AGE YRS	BIRTH DATE	REFERRING DOCTOR						
STREET ADDRESS		2/10/50		CITY-STATE			DEPT.		PHONE	
EMPLOYER									CLOCK CARD NO.	
INSURANCE PROVIDER	CONTRACT NO.		HEALTH INS. NO.			OTHER RESPONSIBLE PARTY				
abc										

REPORT:

BRAIN SCAN: The study was done with radioactive Technetium, and multiple views were obtained in conventional projections. The distribution of radioactivity is unremarkable, and the brain scan is negative.

IMPRESSION: Negative brain scan.

PC  
PC  
PC  
PC

TS:jb  
22

8 21 75

T. SCARLETT, M.D.

TS

REFERRING DOCTOR

AKRON GENERAL HOSPITAL  
NEUROLOGY LABORATORY

Unit No. \_\_\_\_\_

Name: Susan Sica Age: \_\_\_\_\_  
Referring Doctor: John P. ...  
Date: 6/2/67

		(Check Boxes for Tests Desired)			
Electroencephalogram		Pain Threshold	uppers lowers	Sweat Test	
Activated	<input checked="" type="checkbox"/>				
Electromyogram	uppers lowers	Vibratory Threshold	upper lower	Tremogram	upper lower total
Chronaxie	<input checked="" type="checkbox"/>				
Motor Conduction Velocities	uppers lowers	Skin Temperatures	upper lower orbital	Fetal cardiogram Photomotogram Other	upper lower
Sensory Conduction Velocities	<input checked="" type="checkbox"/>	Visual Perimetry	peripheral central		
Plethysmogram	uppers lowers	Nystagmogram	caloric optokinetic		
Audiogram	<input checked="" type="checkbox"/>				

Referral History, Physical Exam, and Diagnosis (Note drugs being given)

Officier's daughter (19 yrs) had a violent accident.  
 She had a head injury to the left side.  
 She is alert.

## Description

The overall record is of somewhat low voltage. There is a mixed dominant alpha rhythm of 12 hz at 20 to 25 microvolts bilaterally through the posterior regions. Satisfactory low voltage 20 to 25 hz background activity is symmetrically distributed through the anterior regions. No sharp, slow, or paroxysmal activity is present.

Eye closure reaction is normal and there is bilateral driving to intermittent photic stimulation. He is stable during and following 3 minutes of good non fasting hyperventilation.

Signed \_\_\_\_\_

## Consultant's Diagnosis

Normal record, awake.

8/67

Signed J.W. Sapiro, M.D. M.D.

THE STATE OF OHIO,  
City of Columbus.

19<sup>77</sup> TERM

State of Ohio,  
Appellee,

vs.

Stacey Lane,  
Appellant.

To wit: January 13, 1977

No. 76-838

E N T R Y

( SUMMIT COUNTY)

Upon consideration of the motion, filed by counsel for appellant, to stay execution of sentence pending the timely filing of an appeal to the Supreme Court of the United States, it is therefore

ORDERED that execution of sentence be, and the same hereby is, stayed, pending the timely filing of an appeal to the Supreme Court of the United States.

It is further ORDERED that if a timely notice of appeal is filed to the Supreme Court of the United States, this stay will automatically continue pending final determination of the appeal by that Court.

It is further ORDERED that the Clerk of this Court shall forthwith send a certified copy of this Stay of Execution to the Superintendent of the Southern Ohio Correctional Facility, who shall acknowledge receipt thereof.

*C. William Strickland*

CHIEF JUSTICE

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No.....Page.....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 13th day of January 1977.

THOMAS L. STARTZMAN Clerk.  
By *Frank L. Cudzic* Deputy.

